

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SOLAN HOLDING BV, :
:
et al., : Civil Action
: No. 1:22-cv-00786
Plaintiffs, :
:
v. :
:
SYNEXXUS COMPOSITES, INC., : September 26, 2022
: 10:00 a.m.
et al., :
:
Defendants. :
:
..... :
.....

**TRANSCRIPT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION HEARING PROCEEDINGS
BEFORE THE HONORABLE PATRICIA TOLLIVER GILES,
UNITED STATES DISTRICT COURT JUDGE**

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1 . **MORNING SESSION, SEPTEMBER 26, 2022**

2 (10:07 a.m.)

3 THE COURTROOM CLERK: Court calls *Solan Holding BV, et al.*
4 *versus Synexxus Composites, Inc. et al.*, Case Number 1:22-cv-786.
5 May I have appearances, please, first for the plaintiff?

6 MR. JEANETTE: Good morning, Your Honor. Craig Jeanette
7 for Plaintiff Patrick Coughlin, and also just for today only with
8 the Court's permission and the plaintiffs' consent serving as
9 local counsel for Ms. Preiser.

10 THE COURT: All right. Good morning, Mr. Jeanette.

11 MR. JEANETTE: Good morning.

12 MR. HODGE: Jason Hodge for Defendants Gregory Glaros and
13 *Synexxus, Inc.*

14 With me is Mr. Matthew Sturtz, *pro hac vice*. Good
15 morning.

16 THE COURT: Good morning.

17 MR. STURTZ: Good morning, Your Honor.

18 MR. HODGE: Good morning.

19 THE COURT: Are we prepared to go forward?

20 MR. STURTZ: We are, Your Honor.

21 MS. PREISER: Yes, Your Honor.

22 THE COURT: And just so it's clear, I expect counsel to be
23 here on time, okay?

24 Are you going to call your first witness?

25 MR. STURTZ: Thank you, Your Honor. Your Honor, the

1 defendants call --

2 THE COURT: Ms. Preiser, did you have something?

3 MS. PREISER: I was under the impression that Your Honor
4 wanted to hear argument on the motion to dismiss prior to the
5 testimony, but --

6 THE COURT: No, no, I'm not. We're resuming the
7 testimony. Thank you.

8 MR. STURTZ: Your Honor, the defendants call Gregory
9 Glaros, spelled G-L-A-R-O-S, to the stand.

10 (GREGORY GLAROS, DEFENDANT'S WITNESS, SWORN)

11 DIRECT EXAMINATION OF GREGORY GLAROS

12 BY MR. STURTZ:

13 MR. STURTZ: Your Honor, may I approach with two pieces of
14 evidence, one for your law clerk and the other for Your Honor.

15 THE COURT: Thank you.

16 MR. STURTZ: May I approach the witness, Your Honor?
17 Thank you.

18 BY MR. STURTZ:

19 Q. Good morning, sir. Would you please state your full name
20 for the record.

21 A. Gregory Glaros, G-L-A-R-O-S.

22 MR. STURTZ: Your Honor, as a matter of housekeeping, on
23 day two before Your Honor we discussed the admission of the
24 affidavits that were submitted to the Court. One of those
25 affidavits is Mr. Glaros's affidavit, so I would move its

1 admission at this time.

2 THE COURT: So received.

3 (Defendants' Affidavit Exhibit admitted into the
4 record.)

5 MR. STURTZ: Thank you, Your Honor.

6 BY MR. STURTZ:

7 Q. Mr. Glaros, you know that we're here to discuss, amongst
8 other things, the Stiletto boat that was built for the U.S.
9 Navy, so I want to start this conversation with you this morning
10 focusing you on the Stiletto, if I can.

11 Can you tell the Court, please, when did you first get
12 involved with the Stiletto and what was your role?

13 A. Yes, sir. So the Stiletto was constructed by contract in
14 2004 in the summertime with a delivery in December of 2005. It
15 was the third vessel that I was put in responsible to from the
16 Department of Defense to build for the Department of Defense.
17 Joint High Speed Vessel was prior to that, and a mechanical
18 dynamic lifting hull that was ducted was the secondary one.
19 Stiletto was the third boat of which I was put in charge of.

20 Q. Okay. When you say you were put in charge of it, sir,
21 would you describe to the Court what your rank was at the time,
22 what your role was?

23 A. Yep. I was a Navy commander having served at that point
24 about 17 years in service. I was a direct report to the
25 Secretary of Defense at the time, and we were selected and

1 directed by our Chiefs of Service to lead programs that our
2 combatant commanders needed to conduct operational needs.

3 **Q.** Can you explain to Her Honor what the operational need
4 was that the Stiletto was intended to address?

5 **A.** Yes. Stiletto was intended to address a couple of
6 challenges that the Department of Defense had, which was
7 lighterage, particularly, which is --

8 THE COURT REPORTER: I'm sorry.

9 THE WITNESS: Lighterage, so the ability to move men and
10 equipment in close to shore very quickly. That was one of the
11 predominant challenges that we had.

12 The second issue was ride quality. At the time, our
13 Special Forces were getting hammered with IG loads, shock loads
14 on their bodies, almost experiencing tension shock on their
15 bodies, and as a result of that they were blowing out their knees
16 and necks. So we wanted to mitigate the shock by having a
17 platform that would reduce that impact on their bodies and extend
18 their careers within the Naval service.

19 And then the third one was to explore new materials to use
20 in boats of which carbon fiber had never been used on a large-
21 scale military craft before. So those were the predominantly
22 three objectives that we needed to meet.

23 BY MR. STURTZ:

24 **Q.** And, again, you mentioned this earlier in your answer.
25 When was the Stiletto completed?

1 **A.** The vessel was launched, which is put in the water, I
2 believe in November or December of 2005 after 15 months under
3 contract, and then I took ownership in April -- March or April
4 of 2006. I took delivery on behalf of the Department of
5 Defense.

6 **Q.** In your role that you have described in the design and
7 construction of the Stiletto, did you, sir, have an opportunity
8 to review and study all of the designs and intellectual property
9 that were created or utilized on the Stiletto?

10 **A.** I did. I not only looked at the Stiletto but many other
11 vessel designs over the years. We visited virtually every
12 shipyard in the world to allied nations to find out new hull
13 forms, so we were intimately familiar with that particular
14 design.

15 **Q.** I have placed in front of you this morning what's been
16 marked as Defendants' Exhibit 2, and I would ask you if you can
17 identify that for the record.

18 **A.** This vessel is the Stiletto.

19 **Q.** And what are the photographs in Exhibit 2, if you can
20 identify them and go page-by-page?

21 **A.** The first vessel is the port side of the Stiletto. I
22 believe the location here, based on the background, is the Joint
23 Expedition Base Little Creek.

24 **Q.** Would you tell Her Honor while we're still on the first
25 picture, how big is the boat that we're looking at in this

1 picture?

2 **A.** It's deceptive. It's 90 feet long by 40 feet wide, has a
3 draft of less than one meter, so less than three feet, and has
4 operating speeds up to 50 knots, which is 54 or 55 miles an
5 hour, and the space is almost 80 metric tons.

6 **Q.** And how many of our troops does it carry?

7 **A.** Um, it was designed to carry a platoon of Navy SEALs
8 along with their 11-meter, which is a 40-foot rigid-hull
9 inflatable boat, so that it can be disgorged out the back end
10 when this vessel gets closer to a contested area, so again the
11 SEALs didn't get beat up.

12 **Q.** And what do we see in the second paragraph?

13 **A.** So the second photo is the Stiletto as well, the
14 starboard side of her. These waters, based on the 11-meter
15 {indiscernible} right-hand corner looks to be in the Chesapeake
16 Bay area where she's conducting experiments and operations.

17 **Q.** And what do we see in the third photograph, sir?

18 **A.** Third photograph, that's the Stiletto, her stern, and
19 from that picture you can see the curtain in the back which
20 allows the vessel, which is 90 feet long, to carry a 40-foot
21 boat inside of her, and this also, based on the pier there, is
22 Joint Experimentation Amphibious Base, Little Creek.

23 **Q.** And then finally, sir, would you tell Your Honor what
24 we're looking at in the fourth photograph in this exhibit?

25 **A.** So the last photograph was Stiletto herself on launching,

1 so this probably is dated about November or December of 2005
2 when she was lifted up and placed in the water for the first
3 time.

4 **Q.** Is the Stiletto still in service today?

5 **A.** Um, proudly and remarkably so. After 16 years of use,
6 she still is conducting extensive operations for the U.S. Navy.

7 **Q.** Is this same type of vessel -- is this the same type of
8 vessel that Composites contracted for to deliver to the Republic
9 of India Navy?

10 **A.** There's a lot of similarities, but it's not the same
11 boat.

12 **Q.** Okay. I want to shift your attention now.

13 THE COURT: Are you moving in exhibits here?

14 MR. STURTZ: Yes, Your Honor. I'm sorry. I move the
15 admission of Exhibit 2 into evidence.

16 THE COURT: So received.

17 (Defendants' Exhibit 2 admitted into the record.)

18 BY MR. STURTZ:

19 **Q.** Mr. Galaros, I'm going to shift your focus now to the
20 intellectual property that was necessary or is necessary to
21 complete the boat for the Republic of India.

22 Would you remind the Court, please, what year did you
23 leave the Navy?

24 **A.** I retired after 20 years of Naval service as a strike
25 fighter pilot on 1 June 2006 after four combat tours.

1 **Q.** Since your departure from the Navy, have you continued to
2 study the technology associated with the Stiletto?

3 **A.** Extensively, and not only the Stiletto, but other vessels
4 that could satisfy that kind of mission.

5 **Q.** Have you applied for and received patents from the U.S.
6 Patent and Trademark Office for systems that you designed for
7 the Stiletto or Stiletto-type vessels?

8 **A.** Yeah. I have right now seven patents, one or two pending
9 right now, and those are predominantly on the modular data
10 distribution system that allows for the integration of any
11 system that's on these boats.

12 **Q.** Would you be kind enough to explain to us laypeople what
13 you mean by the "integration" of those systems?

14 **A.** So, one of the -- as a strike fighter pilot, an aircraft
15 is very well integrated. The integration of that allows a
16 single-seat strike fighter to access anything within that
17 platform.

18 Our armored vehicles and our special operations craft had
19 none of that kind of integration, so I pioneered, designed,
20 fielded, and operated those and patented them for the Department
21 of Defense which allows me to have -- which today is known as an
22 iPhone access or application access to every camera, weapon,
23 radio, or robotic device on those, and it's about the size of a
24 shoebox, is what we created.

25 **Q.** Who negotiated the contract between Composites and the

Republic of India?

A. I did.

Q. Can you describe for Her Honor, just briefly, how long that process took you to negotiate this contract?

A. It was a rather quick one. It was between four and six months, but in earnest the negotiation was about two months long.

Q. If we take a snapshot at the time the contract was entered into in August of 2021 and we come forward to the present, does Composites have all of the intellectual property necessary to design and construct a vessel called for in the contract?

A. Categorically. We have everything that we need.

Q. Now, when I use the term IP, how do you understand that term?

A. Well, having been through this process extensively and, unfortunately, paid dearly for that with our legal counsel, there are four types of intellectual property that's considered. One of them is design patents. The other one is utility patents. There are trademarks. And then there are trade secrets and know-how.

Q. And based on your experience with the Stiletto and now with the vessel for the Navy, do you believe, sir, that Composites possesses all of the necessary IP, as you have defined it, to design and complete the vessel for the Republic?

1 of India?

2 **A.** We do.

3 **Q.** Can you just briefly explain to the Court what the CRADA
4 is that this Court has heard a fair amount about?

5 **A.** CRADA stands for Cooperative Research and Development
6 Agreement. It's an instrument with which the federal government
7 can participate with a company, commercial company to share
8 information between entities legally.

9 **Q.** Can you explain how the CRADA came about that exists
10 between Synexxus, Inc. and the U.S. Department of Defense?

11 **A.** It was over a four- or five-year process of discussing --
12 What the Navy wanted to know was, first, how I built and
13 launched this vessel in 15 months for the price that we did.

14 The experience that they had initially was gone and so
15 they wanted to know very specific things about the vessel, the
16 vessel's construction, its insights and, more importantly, what
17 I was developing on our own to advance the vessel and its
18 technology and its performance.

19 **Q.** Were either you individually or Synexxus, Inc. ever a
20 party to any previous CRADA agreement with the Department of
21 Defense?

22 **A.** No.

23 **Q.** Would you please explain to Her Honor how the CRADA plays
24 into the ability of Composites to design the vessel for the
25 India contract?

1 **A.** Well, Synexxus, Inc. owns the CRADA, has the relationship
2 with the Department of Defense for us to share information from
3 what Synexxus, Inc. develops and what they advance and what Navy
4 wants to earn from that and then particularly what the Navy has
5 learned from the performance of the older prototype Stiletto,
6 both from its operations, its maintenance, and other facets that
7 are outlined in the CRADA that may or may not be considered
8 classified.

9 So in the context of them, Composites being allowed to
10 use that, that was given as a single use of that information to
11 build that boat for the Republic of India in accordance with the
12 Department of Defense's directives.

13 **Q.** And, in fact, as we stand here today before the Court,
14 has, in fact, the exchange of information been taking place
15 between the Navy and Synexxus, Inc.?

16 **A.** Yes. I routinely meet with the U.S. Navy at their
17 facility either on the vessel or in their buildings to discuss
18 and to share the advances that we've made and those things that
19 are advantageous to the Navy as they continue to operate the
20 current vessel.

21 **Q.** In order to review the information provided to Synexxus,
22 Inc. by the Navy, must one have a security clearance?

23 **A.** Yes. Just to enter into the building and facilities, you
24 must. I have a Top Secret/Special Compartmented Information
25 clearance in order to do that.

1 **Q.** During the time that you were negotiating with the
2 Republic of India over the contract, did you take any steps to
3 ensure that, to the extent a contract was awarded, that
4 Composites would have the necessary approvals from the United
5 States government to export a military vessel to India?

6 **A.** We did. We did it in two ways. One, first, Synexxus,
7 Inc. received advocacy, official advocacy from the Department of
8 State, Department of Commerce, and the Department of Defense,
9 and then we filed for a Technical Assistance Agreement so that
10 we were permitted to share that information with the Republic of
11 India, and then we had Synexxus Composites, by association,
12 particularly myself, being registered on the department of
13 state's Website for that purpose, and then Synexxus Composites
14 was given permission to also share that information, and that
15 was validated by the U.S. Embassy in New Delhi by the Office of
16 Defense Cooperation.

17 **Q.** Have you, as we stand here today, taken all of the steps
18 to date that you believe are necessary to export the finished
19 vessel from the United States to the Republic of India?

20 **A.** Yes. We've taken the initial steps. We received
21 approval for those. We have drafted the documents necessary for
22 the next steps when it comes in the manufacturing of the vessel
23 which are pretty extensive, and we're prepared to go through
24 that approval process.

25 MR. STURTZ: Your Honor, I have no further questions for

1 this witness.

2 CROSS-EXAMINATION OF GREGORY GLAROS

3 BY MS. PREISER:

4 **Q.** Good morning, Mr. Glaros.

5 **A.** Good morning.

6 **Q.** We've met. My name is Blair Preiser. I'm counsel for
7 Solan Holding.

8 Synexxus, Inc. doesn't have a facilities security
9 officer, does it?

10 **A.** I'm sorry, ask the question.

11 **Q.** Synexxus, Inc. does not have a facilities security
12 officer; is that right?

13 **A.** We do not.

14 **Q.** Synexxus Composites does not have a facilities security
15 officer; is that right?

16 **A.** We do not.

17 **Q.** Does either Synexxus, Inc. or Synexxus Composites have a
18 SCIF?

19 **A.** We do not.

20 **Q.** Are you familiar with SCIF?

21 **A.** I am.

22 **Q.** A SCIF is required to view Top Secret information; isn't
23 that right?

24 **A.** Yes. SCIFs are only held by the Department of Defense in
25 their facilities. We don't have that, nor is it needed.

1 **Q.** Are you using classified information to build a boat for
2 the Republic of India?

3 **A.** That is difficult to answer in an open forum. I can -- I
4 can neither confirm nor deny that classified information is used
5 on this vessel.

6 **Q.** Are you using proprietary information received from the
7 United States Navy to build a vessel for the Republic of India?

8 **A.** Can you define "proprietary"?

9 **Q.** Anything that you say is provided to you under the CRADA
10 that you're not permitted to share or view because of a lack of
11 security clearance?

12 **A.** I'm sorry, phrase your question for me, please.

13 **Q.** Are you using any proprietary information received from
14 the U.S. Navy under the CRADA that those without security
15 clearances would not be able to view in order to build a vessel
16 for the Republic of India?

17 **A.** Counsel, I'm not following your question.

18 **Q.** Are you using secret government information to build a
19 boat for India?

20 **A.** I can neither confirm nor deny classified information
21 that's used on this vessel.

22 **Q.** You have a State Department Export license which is
23 limited to nonclassified information, right?

24 **A.** That is correct.

25 **Q.** And you have a TAA which is issued by the State

1 Department, you just mentioned, which is also limited to
2 nonclassified information; is that right?

3 **A.** That's correct.

4 **Q.** And isn't it right that, as part of the contract with
5 India, you are required to turn over all drawings, operations
6 manuals, et cetera, so that they have all information related to
7 this boat?

8 **A.** That is not correct.

9 **Q.** That's not correct?

10 **A.** That is not correct.

11 **Q.** Let's take a look at, please, what I believe is Defense
12 Exhibit 1.

13 This is the agreement on behalf of Synexxus Composites
14 and has entered into with the Republic of India, Ministry of
15 Defense; is that correct?

16 **A.** That is correct.

17 **Q.** And if you look on page 34 under Article 31, it says
18 "Patents and Other Industrial Property Rights." Do you see
19 that, sir?

20 **A.** Which page are you on?

21 **Q.** Page 34.

22 **A.** Okay. Which article are you referring to?

23 **Q.** Article 31.

24 **A.** Okay.

25 **Q.** This notes that part of the price paid by India is for

1 the inclusion of the use of all patents, copyrights, registered
2 charters, trademarks and payments --

3 THE COURT REPORTER: I'm sorry, counsel. Slow down just a
4 little bit.

5 MS. PREISER: The amount paid by India is to include
6 payment for the use of patents, copyrights, registered charges,
7 trademarks with payments for any other industrial property
8 rights; is that correct?

9 **A.** Yes.

10 **Q.** At some point a plan was to license all of this
11 information to India so that they could build this boat on their
12 own; isn't that right?

13 **A.** There had been discussions, but there was no agreement
14 either written or implied that were given. On every --

15 **Q.** -- sir --

16 **A.** -- contract --

17 **Q.** Sir.

18 **A.** Go ahead.

19 **Q.** If what you're building requires classified information
20 to build it, you couldn't turn it over to India; is that right?

21 **A.** That's -- there some parts of that that are correct.

22 **Q.** And you don't have a sponsor for a clearance, do you?

23 **A.** I do.

24 **Q.** Who is your sponsor?

25 **A.** Naval Sea Systems {indiscernible} or Combatant Craft.

1 **Q.** Sponsor you currently for a Top Secret security
2 clearance?

3 **A.** Yes.

4 **Q.** Under what project?

5 **A.** Under the CRADA.

6 **Q.** Take a look, please, at the other notebook, Plaintiffs'
7 Exhibit 1. This is a letter that you sent to Patricia
8 Kerschbaumer on November 3rd; is that correct?

9 **A.** Where are you looking in the binder, please?

10 **Q.** Exhibit 1.

11 **A.** Exhibit 1. Okay.

12 **Q.** You sent this letter to Brooke Kerschbaumer on November
13 3, 2021 in response to her questions about various things,
14 including the ownership of the intellectual property on
15 Stiletto; isn't that right?

16 **A.** Okay.

17 **Q.** Is that correct?

18 **A.** Yes.

19 **Q.** And number 4 here you say that Synexxus Composites, LLC
20 owns all rights, designs, and all patents, and that's in
21 response to Ms. Kerschbaumer's question, "Who has ownership of
22 the design, including Naval architecture;" is that right?

23 **A.** It's stated there, but in the deposition that we gave, I
24 made that correction. This was a mistake.

25 **Q.** That's correct. You testified at your deposition that

1 that was a mistake. What did you mean to say here, sir?

2 **A.** Synexxus, Inc.

3 **Q.** Synexxus, Inc. owns all rights, designs and patents?

4 **A.** That's correct.

5 **Q.** Including to the Naval Architecture?

6 **A.** Yes.

7 **Q.** And how about where you say under number 2 that, "All
8 rights, patents and designs were transferred to Synexxus
9 Composites, LLC from Synexxus, Inc."? You testified that was a
10 mistake as well, correct?

11 **A.** Correct.

12 **Q.** That actually Synexxus, Inc. is the owner of all of the
13 designs, rights, and patents in the Stiletto boat?

14 **A.** That's correct.

15 **Q.** If you would look at Exhibit 2, please. You provided
16 this portfolio as part of the proof that you provided to
17 Ms. Kerschbaumer and Mr. Elizaga at Solan regarding ownership of
18 intellectual property; is that right?

19 **A.** I don't know if this is the one because this is an
20 unsigned copy.

21 **Q.** Unsigned or not, this is the copy that was attached to
22 your November 3rd letter?

23 **A.** This is for another project. I'm not sure why that would
24 be the case.

25 **Q.** Did you create this patent portfolio?

1 **A.** I did.

2 **Q.** Do you own all the patents listed on table 3?

3 **A.** No.

4 **Q.** Which patents on table 3 do you not own, you being
5 yourself, Synexxus, Inc. or Synexxus Composites?

6 **A.** Sure. The -- so if you look at table 3, which are also
7 listed in table 2 but they don't have the names of the first
8 seven patents, and also then there's another one highlighted in
9 red in your chart which is powerboat rooster tail suppressor.

10 **Q.** I'm sorry. Are you saying -- can you -- can we go
11 one-by-one which tell me which of these Synexxus, Inc. or
12 Synexxus Composites does not own?

13 **A.** The m-shaped boat hull.

14 **Q.** Okay.

15 **A.** M-shaped boat hull, high speed m-shaped boat hull,
16 powered watercraft, powered watercraft, super-high-speed
17 multihull watercraft, m-shaped boat hull. And if you move
18 further down, powerboat rooster tail suppressor.

19 **Q.** But they are included on Synexxus, Inc.'s patent
20 portfolio; is that right?

21 **A.** Yeah, they're listed, but they're also color-coded.

22 **Q.** Thank you, sir. If you look at -- we have some
23 supplemental exhibits.

24 I have one for the Court and one for the clerk.

25 Would you please take a look at what's marked there as

1 Plaintiffs' Exhibit 26.

2 This is part of a document that you provided during a
3 pitch to the Republic of India Navy and Armed Forces September
4 15, 2020; is that right?

5 **A.** I don't recall ever giving this to the Republic of India.

6 **Q.** Okay. Would you look at page 9, please?

7 **A.** I'm sorry?

8 **Q.** Page 9, please -- actually, page 10 of that document.

9 This document contains the same patents that we just looked at
10 on the patent portfolio from Synexxus, Inc. that you say now
11 Synexxus, Inc. does not own; is that correct?

12 **A.** Never did. They're expired and they're color-coded.

13 **Q.** Did Synexxus -- Synexxus, Inc. never owned any of these
14 patents?

15 **A.** No.

16 **Q.** You presented an assignment agreement from Synexxus, Inc.
17 to Synexxus Composites assigning the rights to these patents,
18 didn't you?

19 **A.** Can you show me the assignment agreement?

20 **Q.** Sure. It's Plaintiffs' Exhibit 3 in the other binder.

21 **A.** Exhibit 3?

22 **Q.** Um-hmm.

23 **A.** Black binder or the white binder?

24 THE COURT: The black binder, Mr. Glaros.

25 THE WITNESS: Black?

1 BY MS. PREISER:

2 Q. Um-hmm.

3 A. Okay.

4 Q. This document is signed by you, correct?

5 A. It's signed, but it seems to be doctored because the
6 first four pages do not have pages 1 of 7, 2 of 7, 3 of 7, 4 of
7 7, and only my signature pages appear. So this is a disjointed
8 document.

9 MS. PREISER: Your Honor --

10 THE WITNESS: So, if you look at the bottom right-hand
11 corner --

12 MS. PREISER: -- this counsel is perfectly able to object.
13 This is a true and correct copy of what we used yesterday and
14 what counsel did not object to then.

15 BY MS. PREISER:

16 Q. Mr. Glaros, does your signature appear on page 7 of this
17 document?

18 A. That is my signature on page 7.

19 Q. Thank you. And on page 6, does Exhibit A also list a
20 number of those patents that you claim Synexxus, Inc. now never
21 owned?

22 A. Nope. They're color-coded as well.

23 Q. Does Exhibit A list patents that you now claim Synexxus,
24 Inc. never owned?

25 A. I've never claimed Synexxus, Inc. or I owned any of those

1 patents that are listed here that do not belong to Synexxus,
2 Inc.

3 **Q.** Are there patents on this list --

4 **A.** -- yes --

5 **Q.** -- that Synexxus, Inc. has never owned?

6 **A.** Yes.

7 **Q.** Sir, this boat that we're building for India, it isn't
8 ITAR regulated, is it?

9 **A.** Everything as a defense article that's exported has to be
10 reviewed for ITAR.

11 **Q.** Is this boat regulated by ITAR?

12 **A.** The Department of State has to determine that when the
13 export license is issued.

14 **Q.** I'm going to show you what we've marked in the
15 supplemental binder as Exhibit 24. This is an e-mail from you
16 to Pamela Schuitema, S-C-H-U-I-T-E-M-A, Tuesday, December 27,
17 2021, copying Timothy Davidson, Patrick Coughlin, Patricia
18 Kerschbaumer where you are sending PNC Bank responses to their
19 questions to you; is that correct?

20 **A.** That's what this appears, yes.

21 **Q.** And if you look at page -- many of these pages say 3 of 3
22 as well, but that just happens to be what's in the original. On
23 the third to last page, what should -- what is the first page
24 marked as page 3 of 3 -- I'm sorry, the second page marked as 3
25 of 3. She asked you here to explain weaponry as it's described

1 in the contract and Synexxus's function in getting it ready for
2 the weaponry, and what exact weaponry they need to prep it for
3 as they produce it; is that right?

4 **A.** I'm trying to find where you're --

5 **Q.** I'm sorry.

6 **A.** -- where you're referencing.

7 **Q.** Bottom of -- third page of your letter to PNC.

8 **A.** Okay.

9 **Q.** See where she asked you about "weaponry"?

10 **A.** Does it begin with, "Explain what weaponry --"?

11 **Q.** Yes.

12 **A.** Okay. I'm with you.

13 **Q.** And if you could just read your response here for a
14 second.

15 **A.** "Two remote --"

16 **Q.** If you could read it to yourself, sir.

17 **A.** Okay.

18 **Q.** It clearly states to PNC that this is a nonITAR regulated
19 vessel. Quote, "The vessel is not ITAR regulated and is NOT --
20 in all caps -- on the ITAR munitions list. No armaments or
21 weapons will be exported. It's a dual-use craft for both
22 humanitarian assistance due to its shallow draft, high-speed,
23 and significant weight-carrying capacity, as well as the patrol
24 capacity against drug smuggling." You wrote that, sir?

25 **A.** I did.

1 Q. Okay. Take a look at Exhibit --

2 MS. PREISER: Oh. I would like to move Exhibit 24 into
3 evidence, Your Honor.

4 THE COURT: Received.

5 MR. STURTZ: No objection, Your Honor.

6 (Plaintiffs' Exhibit 24 admitted into the record.)

7 BY MS. PREISER:

8 Q. Take a look at Exhibit 25, please. This is an
9 intellectual property insurance application form signed by you
10 on March 16, 2022; is that correct?

11 A. Yes.

12 Q. And in this document you claim ownership of specifically
13 two of the patents you just told us that Synexxus, Inc. has
14 never owned; is that correct?

15 A. That is correct.

16 Q. So you told the insurance company you owned patents you
17 did not own; is that right?

18 A. No. We never issued this.

19 Q. But you listed those patents as patents that Synexxus,
20 Inc. owned; is that right?

21 A. It is.

22 MS. PREISER: Your Honor, that's all I have.

23 THE COURT: Are you moving in 25?

24 MS. PREISER: I'm sorry?

25 THE COURT: Were you moving in --

1 MS. PREISER: Yes. My apologies. Please, I would like to
2 move Exhibit 25, and if I didn't before, Exhibit 26 into
3 evidence.

4 MR. STURTZ: Your Honor, I have no objection.

5 THE COURT: Both are received, 25 and 26.

6 (Plaintiffs' Exhibit 25 and 26 admitted into the record.)

7 MR. STURTZ: Your Honor, very briefly.

8 CROSS-EXAMINATION OF GREGORY GLAROS

9 BY MR. STURTZ:

10 Q. Mr. Glaros, do you still have in front of you the patent
11 portfolio, Plaintiffs' Exhibit 2?

12 A. I do.

13 Q. If you would look at the -- it should be titled The
14 Patent Portfolio. Is that what it is?

15 A. It is.

16 Q. Did counsel during your examination direct you to the
17 tables that have a list of patents? Can you find that for me,
18 please?

19 A. I have it.

20 Q. Okay. For the patents that are identified on those lists
21 that are not currently owned by Synexxus, Inc. or that have not
22 expired, are any of those patents utilized in the design or the
23 construction of the vessel to the Republic of India?

24 A. No, none.

25 MR. STURTZ: I have nothing further, Your Honor.

1 THE COURT: Mr. Glaros, you may step down.

2 MR. STURTZ: Your Honor, we will call Mr. William Burns to
3 the stand.

4 (WILLIAM BURNS, DEFENDANT'S WITNESS, SWORN)

5 DIRECT EXAMINATION OF WILLIAM BURNS

6 BY MR. STURTZ:

7 Q. Good morning, Mr. Burns.

8 A. Good morning.

9 Q. Would you please state your full name for the record?

10 A. My name is William Francis Burns, III.

11 Q. Mr. Burns, the Court does not have any type of affidavit
12 from you, so I want to take just a moment to have you describe
13 to Her Honor your background, and I'd like you to focus your
14 comments on your background as a Naval architect.

15 A. All right.

16 Q. Provide just a brief summary for Her Honor your
17 background, sir.

18 A. Okay, I will. I have a passion for boat designs. I have
19 been designing boats for over 30 years. I founded and led two
20 different companies, boat design companies. One was a sailboat
21 company called Dyna Yacht, and we developed some very
22 interesting dependent systems for those boats that allow these
23 boats to be some of the fastest racing boats in the world.

24 I also created M Ship Co, which is the company that built
25 the Stiletto. That is a high-speed design that was originally

1 designed to minimize weight damage in the canals of Venice.
2 It's a very interesting story about how it evolved into the
3 military market. I won't get into that right now, but it's a
4 pretty interesting story to see how designs evolved over time.

5 I've also been an America's Cup designer with two
6 separate campaigns working with Dennis Conner in 1992 and '95.
7 I have over 15 boat design patents, and I have really taken a
8 different approach to Naval architecture that you would find in
9 a normal company. And personally, I actually look at Naval
10 architecture differently. We literally throw the book out, the
11 Naval architecture book out the window, and it allows us to
12 really be creative about some of our designs, and that's allowed
13 us to do a lot of interesting work with a lot of very
14 interesting organizations, especially in the U.S. government.

15 So we worked with OFT when we delivered the Stiletto.
16 But we've also worked with the Office of Naval Research. We've
17 worked with DARPA. We've worked with the Department of Homeland
18 Security, and even some spooky organizations like DIA and CIA.

19 And along the way we picked up some very nice awards.
20 I'm very proud of the fact that I received an award from *TIME*
21 *Magazine* for developing military design in 2006 and from *Sailing*
22 *World* when I received the Boat of the Year Award in 2001.

23 **Q.** The award that you received from *TIME Magazine* in 2006,
24 did that award relate to the Stiletto?

25 **A.** It did, as a matter of fact.

1 **Q.** Are you familiar with the patented technologies and other
2 intellectual property that went into the design of the Stiletto?

3 **A.** I am.

4 **Q.** Okay. Would you tell the Court, if you can, how many
5 military vessels do you think you've designed in your career as
6 a Naval architect?

7 **A.** I probably -- I probably designed over a hundred
8 different boats and platforms, and I would say at least half of
9 those are for the military.

10 **Q.** Okay. Describe your involvement, please, if you would,
11 in the design of the Stiletto.

12 **A.** So I was the person who conceptualized the Stiletto and
13 then developed and experimented with the process of optimizing
14 it, and then did the final design to deliver it to the Office of
15 Force Transportation.

16 I also put the team together that allowed us to build
17 this vessel. No one person can do it, it takes a team, so I was
18 able to put a team together and execute on a very quick timeline
19 something that had never been done before.

20 **Q.** As part of the Stiletto design process, Mr. Burns, were
21 patented designs that you created for M Ship Co. used in the
22 design of the Stiletto?

23 **A.** Yes, they were.

24 **Q.** As of August of 2021, did any of the utility patents
25 utilized in the design or manufacture of the Stiletto still

1 exist?

2 **A.** They had expired. They were no longer active.

3 **Q.** Okay. And since you obviously own many patents, what
4 does that mean? Tell the Court, please, when you say those
5 patents had expired.

6 **A.** When the patent expires, it becomes public domain, so at
7 that point anybody can use that design.

8 **Q.** So, Your Honor has seen lists of patented technologies.
9 To the extent those patented technologies had expired as of
10 August of 2021, can you tell us, are there any restrictions to
11 anybody using those patents -- that patented technology?

12 **A.** As a designer, unfortunately, no.

13 **Q.** Now, today, sir, can you tell Her Honor, what is your
14 present title?

15 **A.** I am president of Synexxus.

16 **Q.** And since we have both Synexxus, Inc. and Synexxus
17 Composites before Your Honor, which of the entities are you the
18 president of?

19 **A.** Synexxus Composites.

20 **Q.** Synexxus Composites is an LLC, sir. Are you sure you're
21 the president of Composites or Inc.?

22 **A.** I misspoke. It is, Inc., actually.

23 **Q.** Okay. When did you first begin your formal employment at
24 Synexxus, Inc.?

25 **A.** I started earlier this year in the middle of January.

1 **Q.** Okay. At the time you joined Synexxus, Inc., was the
2 contract between Composites and the Republic of India already in
3 place?

4 **A.** It was.

5 **Q.** Had you, prior to accepting the position of president of
6 Synexxus, Inc., had an opportunity to review that contract?

7 **A.** I had not.

8 **Q.** Had you had an opportunity to, prior to joining Synexxus,
9 Inc., review the design for the boat that Composites had
10 contracted to build for the Republic of India?

11 **A.** I had not.

12 **Q.** When did you first have an opportunity to review those
13 designs?

14 **A.** After I joined the company.

15 **Q.** And after you joined the company, did you, in fact, take
16 it upon yourself to carefully review all of the designs related
17 to the India contract?

18 **A.** I did.

19 **Q.** Based upon your review of those designs, did you reach a
20 conclusion as to whether or not Synexxus, Inc. possessed all of
21 the intellectual property that was necessary to design and
22 construct the vessel for the Republic of India?

23 **A.** I was quite impressed by the amount of work that had gone
24 into it. As far as IP, I think there was more know-how on how
25 to build the boat and have it operate as an operational craft

1 than when we originally built the boat, so I think there was
2 more know-how and understanding of the design at that point.

3 **Q.** Are you familiar, sir, with a patent related to m-hull
4 designs that has been referred to in Her Honor's courtroom as
5 the '204 Patent?

6 **A.** I am.

7 **Q.** And how are you familiar with the '204 Patent, sir?

8 **A.** I actually drafted it with a patent attorney and drew the
9 pictures that you see there.

10 **Q.** Does the '204 Patent that you created and the drawings
11 for which you submitted to the Patent and Trademark Office of
12 Support, does that patent have anything whatsoever to do with
13 the design of the Stiletto?

14 **A.** No, it does not.

15 **Q.** Does it have anything whatsoever to do with the design of
16 the vessel that Composites has contracted to provide to the
17 Republic of India?

18 **A.** No, it does not.

19 MR. STURTZ: Your Honor, I have no further questions for
20 this witness.

21 CROSS-EXAMINATION OF WILLIAM BURNS

22 BY MS. PREISER:

23 **Q.** Good morning, Mr. Burns.

24 **A.** Good morning.

25 **Q.** The intellectual property that you referenced related to

1 Stiletto that you were the original architect on. You assigned
2 all of your rights and all of that intellectual property years
3 ago to your company M Ship Co.; is that correct?

4 **A.** Not M Ship Co., but actually two different companies.
5 It's typical to assign, even when you own the company, to assign
6 those patents to the company.

7 **Q.** So what is the other company, Dyna --

8 **A.** -- A company called --

9 THE COURT REPORTER: I'm sorry.

10 THE WITNESS: I'm sorry?

11 THE COURT REPORTER: I didn't hear you.

12 THE WITNESS: Dyna Yacht spelled D-Y-N-A, Y-A-C-H-T.

13 BY MS. PREISER:

14 **Q.** Who owns that company?

15 **A.** That company was auctioned off to M Ship Co. back in
16 2011, I believe.

17 **Q.** I'm sorry. You said that company auctioned off M Ship
18 Co.?

19 **A.** It was actually purchased by M Ship Co. through an
20 auction.

21 **Q.** I see. So -- but you don't currently have any individual
22 rights in any of those patents that were used in Stiletto; is
23 that correct?

24 **A.** That's correct. They've all been assigned.

25 **Q.** So you never assigned the rights of any of those patents

1 to Synexxus, Inc.?

2 **A.** No, I did not.

3 **Q.** Did you ever give Synexxus, Inc. permission to use any of
4 those patents?

5 **A.** No.

6 **Q.** And at some point, you signed a security agreement
7 between M Ship Co. and the Charles and Meryl Robinson Revokable
8 Trust assigning an interest in all of those patents to the
9 trust; is that right?

10 **A.** I'm not sure how it related to the trust. I did sign an
11 agreement with M Ship Co. when I left the company, so I'm
12 assuming that might have been transferred to the trust, but I
13 don't know all of the details about how that happened.

14 **Q.** So you -- when you say you signed an agreement with M
15 Ship Co. when you left the company, are you saying that you
16 signed an agreement with M Ship Co. that relinquished any rights
17 that you had with those --

18 **A.** -- that is correct --

19 **Q.** -- patents?

20 MS. PREISER: That's all I have, Your Honor.

21 MR. STURTZ: No redirect, Your Honor. Thank you.

22 THE COURT: You may step down, Mr. Burns. Does that
23 conclude our witnesses?

24 MR. STURTZ: The defendants have concluded their
25 witnesses, Your Honor.

1 THE COURT: All right. And plaintiff as well?

2 MS. PREISER: Yes, Your Honor. Thank you.

3 THE COURT: I wanted to proceed with argument. Would you
4 all like a ten-minute recess before I do that?

5 MS. PREISER: Yes, please, Your Honor.

6 THE COURT: Okay. I'll give you 15.

7 MS. PREISER: Thank you.

8 (Thereupon, a recess in the proceedings occurred from
9 11:06 a.m. until 11:51 a.m.)

10 THE COURT: Okay. Ms. Preiser, I'll hear from you first.

11 MS. PREISER: Yes, Your Honor?

12 THE COURT: I said I'll hear from you first.

13 MS. PREISER: Your Honor, the fraud in this case is black
14 and white. The defendant said they owned a bunch of intellectual
15 property related to Stiletto. They never owned any intellectual
16 property related to Stiletto.

17 The defendants want to make this about whether the IP
18 listed in their portfolios was actually utilized in building this
19 boat or is needed to build this boat. It's not about that. They
20 want to make it about military and Top Secret clearances. It's
21 not about that either.

22 THE COURT: I have a question for you about which patents
23 are used to actually build the boat. Wouldn't that go to
24 materiality?

25 MS. PREISER: Well, the bottom line is, Your Honor, that

1 there's no reason for the defendants to list all of those patents
2 on the portfolio and the assignment and the bank documents and
3 everything that they're using specifically to try to get funding
4 for this product, unless those patents are both owned by the
5 company and necessary for the project. The only reason that they
6 would even -- in fact, they testified now that these patents have
7 expired, but they went so far as to alter the expiration dates on
8 the assignment agreement that they provided as proof --

9 THE COURT: But what evidence is there that they altered
10 the dates?

11 MS. PREISER: Well, Your Honor, the portfolio shows what I
12 believe are mostly accurate dates. When the assignment agreement
13 was created, all but one of them show dates that have yet to
14 expire. But if the company doesn't own it and it's not necessary
15 for building the boat, the very project that you're looking for
16 funding for, the only thing that this company does -- it's a one
17 contract company, as the defendants have said, that was created
18 specifically to build this particular boat.

19 You heard Mr. Coughlin say that there's nothing classified
20 about this boat. You saw that Mr. Glaros told PNC that this was
21 not an ITAR-regulated boat. Plaintiffs are not seeking the
22 CRADA; they're not seeking classified information. They have
23 everything they need to build this boat, and when you represent
24 ownership of patents that you don't own in connection with this
25 project seeking money, that's fraud, and that fraud in and of

1 itself is a huge breach of Mr. Glaros's duties to this company.

2 But there are two other members of this company.

3 Mr. Coughlin, Solan, they're ready and able to build this
4 boat. Mr. Glaros wants to say he's the only one who can build
5 this boat, but he's abandoned the project. He's not building the
6 boat. Solan has one final chance by the end of this month to --

7 THE COURT: What evidence is there before me that he has
8 abandoned the project? You also say in your papers that he has
9 been mismanaging the company.

10 MS. PREISER: That's correct.

11 THE COURT: What evidence is there before me that those
12 things have taken place?

13 MS. PREISER: So, I forget whether it was actually entered
14 into evidence, but it's in our motion and attached to that that
15 Mr. Glaros has written a letter to India terminating the project.

16 THE COURT: That he rescinded the next day.

17 MS. PREISER: Yes, Your Honor, but I don't know how you
18 rescind a termination of a contract. I think we have said that
19 that was done simply to bring more confusion to this issue, but,
20 regardless, the contract has expired. Mr. Glaros has not gotten
21 any extension from India.

22 THE COURT: Okay. What evidence is there before me that
23 the contract has expired?

24 MS. PREISER: The terms of the contract itself, Your
25 Honor.

1 THE COURT: Specifically. I want you to speak
2 specifically, because I want to see what you're relying on in the
3 evidence.

4 MS. PREISER: Sure. Defendants' Exhibit 2 has a delivery
5 date of August 31, 2022 for the contract.

6 THE COURT: But we also know that India has not paid for
7 stage 2 yet.

8 MS. PREISER: That's correct, Your Honor.

9 THE COURT: So, aren't there milestones along the way that
10 you have to be hitting and getting paid for --

11 MS. PREISER: Yes, Your Honor.

12 THE COURT: -- before the delivery date of August the --

13 MS. PREISER: Yes, but Solan has negotiated, as you heard
14 from Mr. Elizaga, an extension to build this boat pursuant to new
15 deadlines. Stage 2 has already been completed. Synexxus, Inc.
16 received stage 2 completion certificates. It just was never
17 paid.

18 THE COURT: Okay. So they hit that mark and India never
19 paid for it?

20 MS. PREISER: That's correct, Your Honor.

21 THE COURT: You can keep going. I'll let you know when I
22 have questions. I do have others, but I'm going to let you
23 continue with your argument.

24 While you're looking through your notes, I do have another
25 question for you, because the defense has argued that you are

1 seeking a mandatory injunction as opposed to a prohibitory one.

2 And which are you doing?

3 MS. PREISER: Your Honor, it's only prohibitory. We only
4 ask that you enjoin Mr. Glaros from any further involvement
5 specific to the India contract or with the money that is in the
6 banks that was funded by Solan specifically for the India
7 contract.

8 THE COURT: Okay. But mandatory -- but this does not seem
9 to be keeping the status quo, to enjoin them from acting further
10 on the India contract.

11 MS. PREISER: Your Honor, they're acting now on the India
12 contract.

13 THE COURT: They haven't been paid.

14 MS. PREISER: That was not a consideration prior, but,
15 regardless, it's not at issue here.

16 THE COURT: No, I'm talking about the kinds of relief that
17 you are seeking. And it looks like it is mandatory in nature if
18 what you are asking for is not about keeping the status quo,
19 because what you're doing is enjoining them from acting on behalf
20 of the LLC which they have been doing. And I know you take issue
21 with whether or not that's happening currently while they have
22 not been paid, but it is taking away or asking the Court to
23 enjoin them from activity that they otherwise would have the
24 opportunity to be engaging in.

25 MS. PREISER: Your Honor, we're asking that you prevent a

1 man who is actively defrauded his investors, the other members,
2 the customer itself from continuing that fraud and allowing the
3 remaining members to rectify it.

4 THE COURT: What evidence is there before me that he has
5 defrauded the customer?

6 MS. PREISER: Well, you heard Mr. Sturtz say just
7 yesterday that -- or not yesterday but Friday that this boat was
8 based only on the intellectual property for Stiletto.

9 THE COURT: I heard him say that it was not based on the M
10 Ship Co. intellectual property.

11 MS. PREISER: He said, Your Honor --

12 THE COURT: But how is that -- because I just want you to
13 be very precise in what your arguments are to the Court so that
14 all of these arguments are based on the record that is before me,
15 either as an exhibit that is attached to your motion or testimony
16 that occurred on the stand, and I did not hear any testimony --
17 and you can correct me if I'm wrong -- about India being
18 defrauded.

19 MS. PREISER: There was no testimony specifically about
20 India being defrauded, but the contract itself is based on
21 Stiletto, which you've heard multiple witnesses testify that the
22 contract itself is based on Stiletto, and Synexxus Composites,
23 unless they have a right to build a boat based on Stiletto, is
24 still representing to India that they have the right to do that.

25 THE COURT: But isn't that what the CRADA does?

1 MS. PREISER: No, Your Honor. The CRADA has zero
2 relevance to the India contract. The only reason the CRADA is at
3 issue in this case at all is because Mr. Glaros provided as proof
4 to his investors and the banks to say that the Navy acknowledged
5 his ownership of the intellectual property specifically in
6 Stiletto.

7 That is actually in the CRADA, that Synexxus, Inc. owns
8 all of the intellectual property rights to Stiletto which isn't
9 true, and the CRADA speaks for itself. If you read the CRADA,
10 there's no transfer of intellectual property rights or patent
11 rights.

12 There's nothing in that document that says the Navy is
13 giving Synexxus, Inc. the right to use Stiletto patents. The
14 Navy doesn't own the Stiletto patents. Stiletto patents were
15 owned by M Ship Co.

16 Mr. Burns testified that he assigned all of his rights to
17 M Ship Co., and that they then later assigned those rights
18 elsewhere. There's nothing in the CRADA that provides that.

19 The CRADA represents Mr. Glaros's representation, false
20 representation to the United States Navy regarding the ownership
21 of the same patents that he is representing now to everyone else
22 that he owns and has since disclaimed ownership in for the first
23 time about a couple of weeks ago.

24 And you heard about -- whether these are the patents that
25 are specifically in use for the India contract or not, they're

1 clearly what was represented to the investors of what was owned
2 and important. And you heard the testimony of Mr. Coughlin, who
3 said that Mr. Glaros told him that the patents were purchased at
4 the M Ship Co. -- from the M Ship Co. bankruptcy estate. That
5 clearly isn't true. You heard from both Ms. Kerschbaumer and
6 Mr. Elizaga that they never would have invested in this company
7 had they believed the specific patents were not owned by the
8 company.

9 So whether or not they are actually in use in this
10 particular boat, the defendants represented to everyone that they
11 were going to be in use for this particular boat or that they
12 were important for this particular boat, and that they were owned
13 exclusively by the company, which is what gave the company its
14 value and what induced Solan to invest millions and then loan
15 millions on top of that, all of which is recoverable if this
16 Court would grant the relief that we're requesting today.

17 THE COURT: I want to go back to that, because you're
18 saying it's recoverable if the Court grants the relief. But what
19 you said yesterday or on Friday was that plaintiffs wants -- or
20 India plans to novate the contract, correct?

21 MS. PREISER: That's correct, Your Honor.

22 THE COURT: So it's not been -- where would that leave
23 Synexxus Composites?

24 MS. PREISER: Well, could you clarify what you mean,
25 please?

1 THE COURT: Well, if they novate the contract, and what
2 was represented is that then Echo Charlie plans to go forward on
3 a new and separate contract with India, correct?

4 MS. PREISER: That's correct, Your Honor. Well, Echo
5 Charlie is owned by Solan.

6 THE COURT: I know.

7 MS. PREISER: Yes.

8 THE COURT: Where does that leave Synexxus Composites?

9 MS. PREISER: Exactly where Synexxus Composites is now,
10 which is with no money, no employees, no contract. But there's
11 no intention to let it remain that way with a ruined reputation
12 and contract breach with vendors and suppliers all over.

13 Solan is trying to make all of that right. It's not just
14 to the benefit of them, it's to the benefit of Synexxus, LLC, a
15 benefit to Mr. Glaros, a benefit to the employees, et cetera.

16 They would like a chance to fix this mess that Mr. Glaros
17 has made.

18 THE COURT: I also have a question about the balances of
19 equities in this case, because in your -- in your brief, if I
20 recall correctly, you said there is no harm to defendants if the
21 Court were to grant the injunction.

22 MS. PREISER: That's correct, Your Honor.

23 THE COURT: But isn't there harm?

24 MS. PREISER: No, Your Honor.

25 THE COURT: Because there are investments on the other

1 side, in Synexxus Composites. And if the contract is just
2 novated and is left there and the Court has enjoined their
3 efforts to continue to participate in the management of the
4 company or to collect on those -- on the contract and what has
5 been -- or Stage 2 to collect that payment, isn't that a harm?

6 MS. PREISER: Your Honor, there can certainly be no
7 further harm than Mr. Glaros has done to this company himself at
8 this point. There is no contract. There is no intellectual
9 property, by his own admission. Those are the only things that
10 gave this company any value.

11 There, I suppose, has been some infusion of capital at
12 some point by the defendant, but it pales in comparison to the
13 money fraudulently procured from Solan. The contract is gone.
14 The money will be gone if India drains those accounts. Synexxus
15 Composites doesn't get that back. It goes to India because the
16 contract has expired.

17 THE COURT: But those funds, they're sitting on the bank
18 guaranty.

19 MS. PREISER: That's correct, they're sitting there, but
20 they're callable on demand by India at the end of this month when
21 they decide that the contract is not going forward. India will
22 take that money, and then knowing --

23 THE COURT: But the contract, you said, is not going
24 forward, that the plan is to novate.

25 MS. PREISER: That's correct, Your Honor. The contract

1 can go forward, as opposed to terminating and restarting, which
2 is a year or a two-year process, something like that, the
3 contract can go forward under a novation. But the very members
4 of the company that were totally defrauded by Mr. Glaros, it's
5 inconceivable how he would be permitted to continue to run this
6 company in this contract given that behavior.

7 THE COURT: And the behavior you're referencing is the
8 statement on the patent portfolio or in the letter to
9 Ms. Kerschbaumer?

10 MS. PREISER: The company only exists right now, Your
11 Honor, because Solan put up almost \$8 million now to keep it
12 running based on their understanding that they were investing in
13 and loaning to a company that had proprietary information related
14 to Stiletto. That's what was represented to Solan. That's what
15 was represented to the insurance companies. That's what was
16 represented to the banks. It's what was represented to the U.S.
17 Navy, and what was represented to the Republic of India.

18 The entire company and the entire project is based on a
19 lie. He's never owned those patents. The company has never
20 owned those patents. And now there is one that is still
21 proprietary and still unexpired, and, in order to fix this mess,
22 Solan has acquired that single patent, and it's --

23 THE COURT: But isn't the evidence that that patent is not
24 necessary for building the vessel?

25 MS. PREISER: Well, Your Honor, it absolutely is necessary

1 for building the vessel. But even if it were not, the defendants
2 have represented that it is in asking for all this money. The
3 defendant said, We have proprietary information, nobody else can
4 do this --

5 THE COURT: Which patent specifically are you referring to
6 now?

7 MS. PREISER: The D Patent that ends in 204, the design
8 patent.

9 THE COURT: That's what I thought the testimony was this
10 morning, was that the D Patent was not necessary to building the
11 boat. You reference -- you call it the D, but the testimony
12 referred to it as the '204.

13 MS. PREISER: Your Honor, that's in dispute, right,
14 because -- Solan never would have purchased it if it didn't
15 believe it was necessary for this boat, just as they would never
16 have invested if they didn't believe that all of these patents
17 were necessary for this boat, and they had any idea that the
18 patents had been expired and that they were never owned by the
19 company.

20 But it's fraud either way, Your Honor. Whether it's
21 necessary for the boat or not, it was represented as necessary.
22 There's no other reason.

23 THE COURT: I understand your argument.

24 MS. PREISER: Yes.

25 THE COURT: But when assessing material -- when I'm

1 looking at is this representation material --

2 MS. PREISER: If you look at the due diligence questions
3 that are posed to Synexxus, Inc., Plaintiffs' Exhibit 1, you see
4 over and over and over again they're asking about the
5 intellectual property, they're asking about who owns it, and
6 they're -- and it's because that's what gives the company its
7 value.

8 THE COURT: Is that what gives the company its value or is
9 it the fact they have this \$33 million contract with India?

10 MS. PREISER: Well, both, but the \$33 million contract
11 with India is based on the fact that they have the exclusive
12 right to build that boat for India and the exclusive right,
13 supposedly, according to them, comes from these --

14 THE COURT: -- Where in the India contract do they talk
15 about those exclusive rights?

16 MS. PREISER: Well, it talks about transfer of
17 intellectual property. They do not list the specific patents in
18 the contract with India; however, he does list the specific
19 patents in the -- in certain pitch materials to India, which you
20 can see in Plaintiffs' Exhibit 1D. I think it's 26; 26, "Why do
21 you list patents you don't own and aren't necessary --"

22 THE COURT: The testimony this morning was that they did
23 not provide this to India.

24 MS. PREISER: They provided it to India, Your Honor, it's
25 just not the -- it's -- my understanding is that this was prior

1 to the decision to build the boat here in the United States.

2 THE COURT: Do you have more?

3 MS. PREISER: No, Your Honor.

4 THE COURT: Did you want to say -- if you could hold one
5 moment. I want to make sure I've asked all my questions.

6 One thing that has not been addressed in your papers or
7 argument today is the issue of bond, if I were to consider an
8 injunction.

9 MS. PREISER: Your Honor, Solan is happy to post a bond if
10 Your Honor believes it would be necessary.

11 THE COURT: It would be necessary.

12 MS. PREISER: Okay.

13 THE COURT: The issue is just the amount of bond, then,
14 that would be sufficient, and I think in this case it would be in
15 the millions.

16 MS. PREISER: Your Honor, just to be clear, no one is
17 asking this Court to enjoin Mr. Glaros from building other boats
18 with Synexxus Composites, either of his companies. He can go
19 build whatever boats he wants. We're only asking that he --

20 THE COURT: You're enjoining him from acting on a
21 \$33 million contract.

22 MS. PREISER: Your Honor, it's \$33 million that's expired
23 that Mr. Glaros terminated and has no intention of performing
24 under and can't revive even if he wants to.

25 You heard the testimony of Mr. Elizaga. India will not

1 work with him, which is why they've required that we get this
2 judicial declaration before they will move forward with people
3 involved with Synexxus Composites.

4 THE COURT: In a separate contract.

5 MS. PREISER: Yes, in a novated contract.

6 THE COURT: With Echo Charlie.

7 MS. PREISER: Yes, Your Honor, but nothing is -- no one is
8 saying that Synexxus can't go on and do what it wants with any
9 other project it has going on, except that --

10 THE COURT: What about the reputational harm there would
11 be to Synexxus Composites where they have been enjoined by a
12 court on acting or doing anything on a contract that they have?
13 Who would then want to do business going forward with Synexxus
14 Composites?

15 MS. PREISER: Your Honor, with all due respect, that
16 damage to Synexxus Composites' reputation has been done. We're
17 trying to salvage -- Solan is trying to salvage that reputation
18 by actually following through on the promises made by the
19 company.

20 THE COURT: But how --

21 MS. PREISER: I'm sorry. I didn't mean to interrupt you.

22 THE COURT: Go ahead.

23 MS. PREISER: The damage has been done. The shipyard
24 terminated the contract and seized all the materials. Solan
25 purchased the materials to prevent the dismantling of the mold

1 and another company from buying the materials that they had
2 already purchased, and so now they've bought it twice.

3 They purchased the intellectual property. They're trying
4 to follow through on their agreements with the shipyard, with the
5 vendors, with the suppliers, with India to salvage some of the
6 reputation that's involved here.

7 THE COURT: Why wouldn't monetary damages be sufficient to
8 address the fraud claims? They're against Mr. Glaros
9 individually, for the most part, except for one fraud claim
10 against both Mr. Glaros -- Two of them are against Mr. Glaros and
11 Mr. Burns, so why couldn't monetary damages address those?

12 MS. PREISER: Well, for one, Your Honor, there's every
13 indication that any monetary damages would not be collectible,
14 and, two --

15 THE COURT: What evidence is there before the Court that
16 monetary damages against them, Mr. Glaros and Mr. Burns, could
17 not be recovered?

18 MS. PREISER: I would have to think about that, Your Honor,
19 but it's my understanding that the company is broke and
20 threatening bankruptcy. But, besides that, there's an
21 opportunity here to salvage this contract which is, as it is,
22 would not be a money-making endeavor anymore. But to salvage the
23 reputation with India and all of these vendors and everybody in
24 this marine space would mean the ability to continue business
25 with those parties as well, and the loss of this contract has the

1 potential to seriously impair the ability of these folks to do
2 that business.

3 THE COURT: Thank you.

4 MS. PREISER: Thank you.

5 THE COURT: I'll hear from you, Mr. Sturtz.

6 MR. STURTZ: Thank you, Your Honor. I'll be fairly brief
7 with the Court this afternoon. Your Honor, the plaintiffs have
8 failed to meet their burden of proof and persuasion in this
9 extraordinary request for relief that they've made.

10 As Your Honor's comments began to indicate, there's a
11 glaring hole in the logic that supports the allegations that have
12 been made before this Court, and that glaring hole is how
13 intellectual property or patents, as it were, listed on certain
14 documents translates into the product that has been promised to
15 the Republic of India.

16 Your Honor offered on Friday that you were ready to move
17 forward without my witnesses. The reason why I declined Your
18 Honor's offer and put them on the witness stand was because
19 nobody entered this courtroom prior to today with any experience
20 or expertise in the design of either the Stiletto boat or the
21 vessel for the Republic of India, no one.

22 Nobody has testified to this Court that, in fact, the IP,
23 the patents actually that are listed on those documents, are in
24 some way, shape, or form necessary for the construction of the
25 boat for India. On that list of patents, the last six of those

1 patents are all patents held by Synexxus, Inc.

2 Those are the patents that have been developed since the
3 Stiletto was constructed in order to enhance the systems that
4 operate the boat itself, but not one single person entered this
5 courtroom to tell this Court on behalf of the plaintiffs that any
6 one of those patents on that list, Your Honor, is a required and
7 necessary component of the boat for the vessel in India, not one.

8 Your Honor was very strict with me, understandably, in
9 limiting the questions that I could ask of the plaintiffs'
10 witnesses relating to patents and patent technology. I fully
11 appreciate why Your Honor would do that, because none of those
12 witnesses has the qualifications, the training, the education, or
13 the experience to even begin to comment to Your Honor about what
14 patented technologies are, in fact, incorporated into the boat
15 for the Republic of India.

16 This morning you heard from two very important people,
17 Mr. Glaros -- and I realize that he's named here -- but
18 Mr. Glaros has literally spent the last 19 years focused first as
19 the overseer of the Stiletto project, which Mr. Burns is also
20 deeply involved in as the Naval architect, but since then through
21 Synexxus, Inc. continuing that process which is what led, of
22 course, Your Honor, to the U.S. Navy recognizing that expertise
23 and entering into the CRADA with Synexxus, Inc. and Mr. Glaros.

24 So Your Honor has received no evidence from the plaintiff
25 that any of the issues that they raise regarding the patented

1 technologies are, in fact, germane to the ability of this entity
2 to design and construct this vessel.

3 THE COURT: But what plaintiffs have argued is those
4 representations in that patent portfolio is what gave the company
5 or is part of what gave the company value to the plaintiffs.

6 MR. STURTZ: Really the same question, Your Honor, that
7 I've been addressing, and I will tell you why. You may recall,
8 when I did the examination of Ms. Kerschbaumer, we pointed out
9 the fact that the due process was all of two days, Your Honor.
10 He signed an NDA on Wednesday and on Saturday forwarded to
11 Mr. Glaros the original note, the first note.

12 No testimony was offered to Your Honor to indicate that in
13 that 48-hour or approximate 48-hour timeframe that the Solan
14 folks retained a Naval architect or anybody else with any type of
15 IP experience to analyze whether or not any of that IP listed
16 was, in fact, incorporated into or necessary for the vessel for
17 India, not one person.

18 It's the exact same problem that they face today in this
19 courtroom. Only a qualified expert could come into this court
20 and say to Your Honor these things on this list are either
21 incorporated into or necessary for the design or construction of
22 the boat for India.

23 THE COURT: Then why leave them on the list?

24 MR. STURTZ: Now that's an interesting question, Your
25 Honor. That question was never posed to those witnesses that I

1 have put forward. Now, we did make it very clear to the Court
2 that there are highlighted numbers on there.

3 Now, the reality is all of those patents tied back to the
4 original M Ship Co. patents. And so if you were to examine the
5 patent portfolio, they all are referenced, and that's why they're
6 listed; not because they actually are incorporated into the final
7 product, but because, for someone like Mr. Glaros who is
8 researching this constantly, new patents come on.

9 And so you look at those new patents to determine whether
10 there's anything in that new patent that may become a necessary
11 item for the boat for India. If it does, you might reach out and
12 get an assignment or license to use it.

13 But Mr. Burns, the very architect of the Stiletto and the
14 actual inventor of the M Ship Co. patents, sits on this witness
15 stand and tells Your Honor -- unrebutted -- that those patents do
16 not have a role in the design or construction of the boat for
17 India. It's unrebutted, Your Honor, and he is unquestionably the
18 person most qualified to comment because he is the inventor.

19 That's specifically why I raised with him, Your Honor, the
20 one issue, the '204 Patent, because the testimony before Your
21 Honor was that Solan went out and acquired rights to the '204
22 Patent.

23 Mr. Burns is the inventor of the '204 Patent. Unrebutted,
24 he said to Your Honor on the witness stand, there's no
25 relationship whatsoever to this boat, none. There is no other

1 testimony or evidence before Your Honor with regard to those
2 points. And that's what sits at the very core of the dispute
3 before this Court. None of those things have anything to do with
4 the boat. They didn't call a single qualified person to testify
5 that, in fact, what's on any of those lists is required to design
6 or construct the boat for India, none.

7 So that's why we say there is a fundamental and glaring
8 hole in the middle of what they have presented to Your Honor,
9 which defeats the entire motion, because without that there is
10 nothing here to discuss.

11 Now, I will touch upon various elements that Your Honor is
12 very well aware of: Likelihood of success on the merits. Not on
13 what's gone on in this courtroom.

14 THE COURT: What about their breach of their fiduciary
15 duty claim, which is Count -- I think it's the last count in the
16 complaint.

17 MR. STURTZ: If the alleged fiduciary duty is the
18 fiduciary duty to oversee the execution of this contract, as Your
19 Honor has already pointed out and counsel admitted this morning,
20 the company has completed the milestones for the stage 2 payment.

21 THE COURT: I don't think that's the crux of their breach
22 of fiduciary duty claim; it's that Defendants Glaros and Burns
23 were making large payments to themselves of the company's funds.

24 MR. STURTZ: Your Honor --

25 THE COURT: Now, part of it didn't bear out, because I

1 think they also at some point said there would be a witness here
2 to talk about how they planned to pay Synexxus Inc.'s employees
3 with a 20 percent markup. I didn't hear any evidence of that.

4 MR. STURTZ: Your Honor, I'm not aware of any evidence put
5 forth before this Court to indicate how any proceeds of any of
6 the dollars that are involved here were improperly utilized by
7 anybody. I see the allegation in the papers, but no witness took
8 this witness stand and gave this Court any details on how any
9 amount of money that was funded by them went to the wrong place.
10 So, on the evidence before the Court, there is none that I'm
11 aware of that touches upon that particular aspect of this. So
12 that certainly, from our standpoint, would not support the
13 extraordinary relief that they're asking this Court for.

14 THE COURT: Well, is a breach of fiduciary duty only
15 limited to the moneys that they would have put in, or would the
16 breach of the duty go to Synexxus Composites?

17 MR. STURTZ: I'm not sure I follow where Your Honor is
18 probing there. The evidence before this Court, there was none
19 presented to the Court regarding any alleged breach of any duty
20 either to Solan as a member or to Composites.

21 The only thing that Mr. Glaros has been doing is focusing
22 on meeting the deliverables in the India contract. Until you
23 reach a point, like any construction project, Your Honor, if the
24 owner is not paying, then you have every right to stop work until
25 those issues are resolved, and those issues do arise.

1 I'm for sure not telling Your Honor anything that Your
2 Honor is not aware of. In a perfect world, everybody would
3 always fully perform, and everybody would timely be paid. So
4 there is a dispute between Composites right now and India right
5 now on payment. There's no question about that. But the fact
6 that there's this dispute between the two of them certainly is
7 not a reflection that somehow the management of Composites has
8 breached some duty, it's simply a matter of contract -- I'll call
9 it contract administration, Your Honor, and it's not uncommon in
10 construction projects, certainly, or any large project where
11 something is being built for a lot of money, and you work through
12 those issues or you don't, but there's nothing before this Court
13 to suggest that in any way -- in fact, there's been no testimony
14 from anybody on behalf of India, there's been no testimony in
15 this courtroom that India is taking any particular position,
16 because nobody from India representing India appeared in this
17 courtroom. And so I don't believe that's currently before the
18 Court in the sense that there's no evidence before the Court on
19 that issue for the purpose of this motion.

20 So we don't believe they have shown a likelihood of
21 success on the merits.

22 THE COURT: Now, in your papers you talk about this being
23 a mandatory injunction, and, of course, plaintiffs dispute this.
24 What makes this mandatory?

25 MR. STURTZ: Well, as Your Honor was pointing out a few

1 moments ago, it's a mandatory one because to maintain the status
2 quo is not what they're asking for. What they're asking for is,
3 essentially, for this Court to order that Synexxus Composites
4 give up its rights under a contract; permit that same contract to
5 be performed by Solan, and -- I think Your Honor was going down
6 this path, although I didn't get there in the earlier
7 questioning.

8 There's already, as I stand here before this Court, more
9 than \$6 million in the stage 2 payment that's due to Composites.
10 You heard counsel admit that that work has been completed by
11 Composites. Why wouldn't Composites then be the beneficiary of
12 that payment? That's the status of this matter. What they're
13 asking for is that there be a novation; they get all of the
14 money, even though they didn't have anything to do with the
15 completion of that stage 2 work; that they go forward and
16 complete the project.

17 Now, Your Honor, you haven't heard a single person who's a
18 Naval architect tell you that they're willing to take that on for
19 them. You haven't heard a single person come into this courtroom
20 to tell you they have the skill set. The two gentlemen who
21 testified this morning possess decades of experience with this
22 particular boat, the Stiletto itself. That's what they bring to
23 the table, and that's the only evidence before this Court as to
24 who moving forward is responsible for the completion of this
25 contract, or I should say the execution, because I don't know

1 whether it's going to be completed. That's what disputes look
2 like when the person who orders the vessel doesn't pay for it.
3 So I can't tell you, as I stand here, but there's been nobody to
4 come in here to testify that they have the capability --

5 THE COURT: And I understand your point on that, and I
6 want to be clear. I'm not focussed on who and whether or not
7 Solan has the ability to do it, because, in all fairness, I
8 limited Mr. Elizaga on that testimony because my focus was on
9 whether we can get to that point.

10 MR. STURTZ: Sure. But there is nothing, Your Honor, that
11 prevented them from calling the appropriate person beyond either
12 Mr. Elizaga or Ms. Kerschbaumer to give this Court some
13 indication that they're familiar with these designs, they're
14 familiar with the project, they're familiar with how to build
15 these boats, they're familiar with the intellectual property
16 that's involved, nothing, none of that.

17 Your Honor was right to prevent Mr. Elizaga from
18 testifying to that because he's a private lender from Spain.
19 There was no background upon which Your Honor would base any
20 credibility on him saying what can or can't be done with this
21 boat. That's not his bailiwick. It's on them to bring that
22 person into this courtroom, and that never happened, Your Honor.
23 That's why this record is devoid of any support for their central
24 allegation.

25 There's also no evidence before this Court that the

1 balance of convenience falls in their favor. Your Honor has now
2 heard this morning from the two individuals who were central to
3 the design and construction of the Stiletto, the same boat that
4 in its modern iteration the Republic of India Navy would like to
5 acquire. That's the only evidence before this Court. So there's
6 no indication to this Court that anybody else has the ability to
7 actually perform this contract and has control over the broader
8 intellectual property that's required to execute the contract.

9 There's also no evidence before this Court of irreparable
10 injury because all of these claims are for money damages.

11 THE COURT: Well, they allege that there would be harm to
12 reputation to their customers.

13 MR. STURTZ: Yes, and I'm astonished by the entire
14 discussion, because we're talking about a military craft.
15 There's no question about that.

16 The suggestion to this Court that somehow the military,
17 the India Navy doesn't put some type of value on the fact that
18 the gentlemen that they're dealing with is the architect from the
19 U.S. Naval side who oversaw the construction and deployment of
20 this vessel. Of course, the India Navy looks at him and says
21 this man has the credibility to bring this project to fruition.
22 He's done it before. He was a 20-year man in the U.S. military.
23 Compare that, Your Honor, with the plaintiffs' witnesses. They
24 have zero military experience, zero experience with this
25 particular craft, and have never exported a military vessel

1 anywhere in the world. I don't think there can be any doubt,
2 based upon this record, which of these two groups of parties is
3 in the best position to execute and fulfill this contract, if we
4 get to that point, Your Honor.

5 And finally, Your Honor, the last point, public interest.
6 This is an LLC, and we had some discussions with Your Honor about
7 what is it that lies at the heart of this request for either a
8 TRO, as you've denied already, or a preliminary injunction.

9 And I'll just finish with that thought. This request for
10 relief from Your Honor is a request that the owner of Synexxus
11 Composites, Inc. be precluded from operating that entity. That's
12 what they're asking this Court for.

13 If there were not that element, Your Honor, this case
14 would be no different from any of the, I'm sure, incredible
15 number of cases that are filed in this courthouse on a regular
16 basis alleging breach of contract, breach of fiduciary duty, and
17 assorted business tort claims, and they all seek money damages.

18 There's nothing unique about those types of cases. Money
19 makes those people whole. And we're not even permitted to engage
20 in discovery in aid of enforcement prior to the entry of a
21 judgment, so the whole discussion that goes on that's been
22 filtering through this proceeding about ability to pay, that is
23 not normally a consideration until a judgment is entered in the
24 legal system.

25 So there is no evidence in this record that suggests that

1 if, in fact, in a worst-case scenario for defendants that a
2 judgment is entered, that there's somehow no ability to pay. But
3 even if that were the case, that is not an element of the request
4 for injunctive relief, because if that were the case, Your Honor,
5 nearly every case where a plaintiff had reason to doubt -- at the
6 end of the day, if I obtain a judgment for millions of dollars
7 against an individual, will I be able to collect; and if not,
8 then I should be able to get a TRO or a preliminary injunction --
9 that is not an element.

10 That sounds more, Your Honor, like an attachment before a
11 judgment proceeding, and that's not why we're here today and
12 that's not been pled to this Court. From our perspective, they
13 have failed to meet their evidentiary burdens, to demonstrate to
14 the Court the existence of these elements, and for that reason we
15 ask this Court to deny their requested relief.

16 Thank you, Your Honor.

17 THE COURT: Mrs. Preiser, did you have anything in
18 rebuttal? Don't feel obligated.

19 MS. PREISER: No, Your Honor.

20 THE COURT: So I'm going to take a lunch recess, and we'll
21 resume at 2 p.m. and I'll give my ruling.

22 (Thereupon, a luncheon recess was had beginning at
23 12:44 p.m.)

24

25

AFTERNOON SESSION, SEPTEMBER 26, 2022

2 (2:33 p.m.)

3 THE COURT: Thank you, and I apologize for keeping you all
4 waiting. So this matter is before the Court on Plaintiffs Solan
5 Holding BV and Synexxus Composites, LLC's request for a
6 preliminary injunction, and essentially plaintiff seeks
7 injunctive relief requesting the Court to enjoin defendants and
8 their officers, employees, or anyone acting on their behalf from
9 further interfering with the performance of the India contract or
10 interfering or attempting to interfere with the funds provided by
11 plaintiffs as performance for guarantees.

12 As an initial matter, I'll say that preliminary
13 injunctions are extraordinary remedies, and they should be
14 sparingly granted and in limited circumstances. That's
15 boilerplate 4th Circuit law. A party seeking injunctive relief
16 must establish four factors: One, that they are likely to
17 succeed on the merits; two, they are likely to suffer irreparable
18 harm in the absence of the preliminary relief; three, that the
19 balance of equities weighs in their favor, and that means that
20 the balance of convenience determined by whether greater injury
21 would be done to the defendant by granting the injunction than
22 would result from its refusal; and four, that the preliminary
23 injunction is in the public interest.

24 And those are from the *Posh* case in the 4th Circuit as
25 well as the U.S. Supreme Court *Winter* case.

1 A preliminary injunction can be both mandatory or
2 prohibitive, and I know in this instance the parties dispute
3 whether it's mandatory or prohibitive. When it's mandatory, it
4 is seeking to alter the status quo, and when it's prohibitive,
5 it's attempting to maintain it. And when I look at the requests
6 that are here, I see it as altering the normal course of
7 business, and so I find that it is seeking a mandatory injunction
8 here, and those require a more exacting standard of review. And
9 so the standard that a plaintiff must show of a likelihood of
10 success on the merits is by clear and convincing evidence. But,
11 to be candid, whether you were seeking mandatory or prohibitive
12 injunction, the issues that I see here and my ruling,
13 essentially, would be the same under either, just to be clear.

14 And so first I turn to success on the merits. Now, in the
15 briefs and in the arguments before the Court, plaintiff
16 essentially focuses on the fraud claims in terms of arguing the
17 merits of the case; that, as well as the fiduciary duty claim,
18 and plaintiffs argue or claim that in providing the documents in
19 both the November 3rd letter to Ms. Kerschbaumer, as well as in
20 the attachments, that Defendant Glaros falsely represented to
21 Solan, one, that Synexxus Composites owned all of the
22 intellectual property related to the Stiletto, and, two, that the
23 patents related to the Stiletto were in full force and effect.
24 In particular, plaintiff argues that Defendant Glaros lied about
25 owning the M Ship Co. intellectual property. But for or based on

1 this misrepresentation, Solan entered into the first note, the
2 November 2021 note and then the subsequent notes, and both
3 Ms. Kerschbaumer as well as Mr. Elizaga testified to this during
4 their testimony.

5 Now, those are the -- that's the conduct that they allege
6 that Mr. Glaros engaged in. Additionally -- now, at that time --
7 Well, Mr. Burns, based on the testimony today, did not become
8 employed by Synexxus, Inc. until January of 2022, which seems to
9 be after the notes, but the allegations as to Mr. Burns are that
10 in February of 2022 he attended a dinner where they discussed
11 these patents and he sat silent while the same misinformation was
12 presented at the dinner and did not correct it.

13 And I'm going to address each of the fraud claims
14 individually. For Count 1, it's federal securities fraud against
15 Mr. Glaros, and the elements of that claim are that the defendant
16 made a false statement or omission of material fact with scienter
17 upon which the plaintiff reasonably relied that approximately
18 caused the plaintiffs' damages. That's the *Hall v. Tyco* case
19 where those elements come from.

20 I'll do the Virginia securities fraud claim at the same
21 time, since it's based on the same conduct. And to establish a
22 claim under the Virginia Securities Act, the plaintiff must plead
23 a material misrepresentation. That's the *Carlucci* case, 886
24 Supp. 2d Edition 497.

25 Scienter reliance and causation are not required elements

1 under the Virginia securities claim, and both of these claims are
2 based on that November 3rd letter and then those attachments.

3 Now, during his testimony, Mr. Glaros acknowledged that
4 the reference to Synexxus Composites in that November 3rd letter
5 should be Synexxus, Inc., so he's conceded that the letter was
6 not accurate.

7 Now, plaintiff also points out that the defendant did not
8 own all of the patents that are listed in the patent portfolio,
9 and, in fact, that some of them are expired. There's some
10 changing in the dates, so there's definitely some issues with
11 what is contained in terms of the representations in the letter,
12 but the issue that the Court finds that the plaintiff has not
13 shown a likelihood of success on deals with the materiality.

14 Plaintiffs sought to be part of a project to build a
15 vessel for India, and the unrebutted testimony before the Court
16 is that the defendant owned all of the IP that was necessary to
17 deliver that vessel to India, and none of the, quote-unquote --
18 I'm saying quote-unquote -- questionable, because none of you
19 used the term "questionable patents." By that I'm using some of
20 those M Ship Co. patents that are identified as -- on the
21 attachment to the letter.

22 None of those patents were required to build the vessel,
23 and that evidence was unrebutted, and that came from both
24 Defendant Glaros and in Defendant Burns's testimony today.

25 And so given the fact that that patent is not required to

1 even build the vessel and the fact that they owned all of the --
2 there's no other evidence -- there's no evidence before the Court
3 that they didn't own all of the patents that were required to
4 build the vessel that they were delivering to India.

5 So, given that, the Court finds that the plaintiff hasn't
6 carried its burden of showing how those specific representations
7 were material.

8 And also, as to Count 1, the federal securities fraud
9 claim, where justifiable reliance is an element, there's no
10 evidence before the Court to show or to establish that plaintiff
11 justifiably relied on the representations that were in those
12 letters because, as the defendant -- as the testimony was in
13 court and as the documents reflect, there doesn't appear to have
14 been any due diligence conducted at the time.

15 And also, as to scienter, which is only an element on
16 Count 1 -- it's not an element on Count 2 -- there was simply no
17 evidence as to scienter at all. So, for these reasons, the Court
18 finds that plaintiff has not carried its burden of showing a
19 likelihood of success on Counts 1 and 2.

20 Counts 3 and 4 -- Count 3 is a fraud claim also against
21 Defendants Glaros as well as Burns. Count 4 is the negligent
22 misrepresentation count claim also against Defendants Glaros and
23 Burns, but for the same reasons that I've already stated as to
24 Counts 1 and 2, I find that those same -- the same problems with
25 the evidence before the Court are the lack of evidence in terms

1 of materiality, carry forth, and so I don't believe plaintiff has
2 shown or carried its burden of establishing that it would succeed
3 on Counts 3 and 4.

4 Now, for the breach of fiduciary claim, under Virginia law
5 a manager shall discharge his or its duties as a manager in
6 accordance with the manager's good faith business judgment of the
7 best interest of the limited liability company, and in this case
8 the plaintiff asserts that both Defendants Burns and Glaros --
9 Although, for the breach of fiduciary duty count, it's argued as
10 such in the motion for preliminary injunction -- I believe it
11 relates to Count 11, which is the misappropriation and waste
12 count against Defendant Glaros. It's not entitled to breach of
13 fiduciary duty, but I believe that that's the count or the claim
14 that you are referencing.

15 And in that the plaintiff alleges or asserts that
16 Defendants Burns and Glaros are paying themselves salary and
17 benefits excessively; that there was also some type of
18 mismanagement of the company and misuse of company funds.

19 Again, the burden is on the moving party in this case, and
20 there was simply no testimony in this hearing about defendant --
21 specifically about Defendant Glaros's breach of any duty to
22 Synexxus Composites. Both Mr. Elizaga's affidavit and
23 Ms. Kerschbaumer's affidavit include some conclusory statements
24 about mismanagement or his failures, but there's no detail about
25 any mismanagement of the India project. No one came in here and

1 testified about any specific mismanagement. There were bank
2 statements attached to plaintiff's motion, but there hasn't been
3 any testimony that connects those line items identified in the
4 bank statements and how they somehow amounted to some
5 inappropriate conduct on the part of Mr. Glaros.

6 And again, it's plaintiffs' burden to show that. So I
7 don't think that plaintiff has carried their burden of
8 establishing a likelihood of success on the merits on the breach
9 of fiduciary duty claim.

10 Now, in terms of irreparable harm, plaintiff asserts that
11 they will suffer irreparable harm in the form of reputational and
12 professional harm, as well as financial if an injunction is not
13 granted.

14 The Court does not doubt that there can be reputational
15 harm and loss of customers when there are problems with a
16 contract, and I know that there's no suit before me on the India
17 contract, but the reputational harm that you're talking about is
18 if Composites is unable to deliver on the contract to India, and
19 so I don't doubt that there can be reputational harm and a loss
20 of customer harm that can constitute irreparable harm, but I
21 don't think plaintiffs have shown that in this case. They've
22 sued for money damages, and yes, there can still be reputational
23 harm and loss of customers when you can recover on money damages,
24 but in this case what is very telling -- and plaintiffs are
25 arguing that there will be no company of value left to recover,

1 but what's clear to me, based on some of the representations from
2 counsel, is that there doesn't seem to be a concern about
3 protecting the reputational harm to Composites, LLC, because the
4 intention here is to novate the contract and for there to be a
5 new contract with Echo Charlie. And so in terms of the -- given
6 the facts here, I just think that that undercuts the argument
7 that there -- that the real concern here is about reputational
8 harm to the company, particularly where in this field plaintiffs
9 may be -- because I think Ms. Kerschbaumer testified about her
10 experience building boats and yachts, but this is a separate
11 field in some ways because it's a specialty. These are military
12 vessels or vessels that are being turned over on these contracts.
13 It may not be at this point -- this is a totally different field
14 from what she has engaged in in the past.

15 Also, when I look at the balance of equities, they weigh
16 heavily in favor of the defendants in this case. They would
17 suffer great harm if I were to grant this motion for injunctive
18 relief and not be allowed to follow whatever course appropriate
19 for Synexxus Composites on this India contract in trying to
20 salvage it where they can. Because what you're asking for is for
21 the Court to enjoin the executives and the people who have been
22 running the company from being able to run it, and they would
23 have -- they would have no recourse with respect to the contract
24 that they negotiated and have delivered on, at least to stage 2,
25 based on your representation that they received the certificate

1 of completion as to stage 2.

2 Finally, the Court finds that it is in the public interest
3 to deny the preliminary injunction because the preservation of a
4 business owner or businessman's interest to operate or an
5 executive to operate his company, in the absence of a clear
6 showing of some type of misconduct, is in the public interest.
7 And so for those reasons I'm going to deny the motion for
8 preliminary injunction. Your exceptions are preserved.

9 Is there anything further for today?

10 MR. STURTZ: Nothing from the defendants, Your Honor.
11 Thank you.

12 THE COURT: Ms. Preiser?

13 MS. PREISER: Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 (Proceedings adjourned at 2:55 p.m.)

16 **C E R T I F I C A T E**

17
18 I, Scott L. Wallace, RDR-CRR, certify that
19 the foregoing is a correct transcript from the record of
proceedings in the above-entitled matter.

20 /s/ Scott L. Wallace

9/28/22

21 -----
22 **Scott L. Wallace, RDR, CRR**
Official Court Reporter

23 Date

24

25